

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

PAMELA THOMAS,) No. CV 12-09915-VBK
Plaintiff,)
v.) MEMORANDUM OPINION
CAROLYN W. COLVIN, Acting) AND ORDER
Commissioner of Social)
Security,)
Defendant.)
(Social Security Case)

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issue:

1. Whether the Administrative Law Judge ("ALJ") gave proper

1 consideration to Plaintiff's testimony and statements.
2 (JS at p. 4.)
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4 This Memorandum Opinion will constitute the Court's findings of
5 fact and conclusions of law. After reviewing the matter, the Court
6 concludes that the decision of the Commissioner must be affirmed.

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9 **THE ALJ PROPERLY ASSESSED PLAINTIFF'S CREDIBILITY**

10 After conducting a hearing, the ALJ determined that Plaintiff has
11 the residual functional capacity ("RFC") to perform light work, and
12 among other things, is able to stand and walk up to six hours in an
13 eight-hour workday, and sit up to six hours in an eight-hour workday
14 with normal breaks. This finding is consistent with the conclusions
15 of all the examining and non-examining doctors in this case (there are
16 no treating sources). These include Dr. Sourehnissani, who did a
17 consultative examination ("CE") in internal medicine at the request of
18 the Department of Social Services on December 15, 2009 (AR 241-244).
19 Indeed, Dr. Sourehnissani was of the opinion that Plaintiff was
20 capable of greater exertional abilities than are encompassed in light
21 work (i.e., that she could carry up to 50 pounds occasionally and 25
22 pounds frequently. (AR 245.)

23 A prior internal medicine CE was conducted at the request of the
24 Department of Social Services on November 1, 2008 by Dr. Benrazavi (AR
25 263-268) who also concluded, consist with Dr. Sourehnissani, that
26 Plaintiff could lift and carry up to 50 pounds occasionally and 25
27 pounds frequently, with standing and walking up to six hours per day
28 and sitting up to six hours per day. (AR 267.)

1 A Physical Residual Functional Capacity Assessment was rendered
 2 by non-examining physician Dr. Yu, who agreed with the other doctors
 3 that Plaintiff could lift 50 pounds occasionally, 25 pounds
 4 frequently, stand and/or walk with normal breaks for six hours in an
 5 eight-hour workday, and sit with normal breaks for a total of six
 6 hours in an eight-hour workday. (AR 247.)

7 Plaintiff does not agree with the ALJ's interpretation and
 8 summation of her own description of her subjective symptoms, described
 9 in the ALJ's Decision as difficulty standing and walking; suffering
 10 from breathing problems; swelling of her knees and high blood
 11 pressure; need to have her daughter help her bathe due to her
 12 swelling; and that she requires someone to comb her hair because she
 13 cannot lift her shoulder. (AR 13-14, citing exhibits.)

14 In assessing Plaintiff's credibility with regard to her testimony
 15 as to subjective symptoms, the ALJ determined that while her medically
 16 determinable impairments could reasonably be expected to cause the
 17 alleged symptoms, her statements concerning intensity, persistence and
 18 limiting effects of these symptoms are not credible to the extent they
 19 are inconsistent with the determined RFC. (AR 15.)

20 The factors to be considered in determining credibility are well
 21 established both in case law and administrative regulations. See Fair
v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989); Thomas v. Barnhart, 278
 23 F.3d 947, 958-959 (9th Cir. 2002); 20 C.F.R. §§ 404.1529(c);
 24 416.929(c); Social Security Ruling ("SSR") 96-7p. Included among the
 25 evaluative factors are a claimant's daily activities, and evidence
 26 from physicians and third parties. Here, the ALJ relied upon the
 27 consistent opinions of the examining and non-examining physicians, and
 28 in fact, erred in Plaintiff's favor by reducing her exertional

1 abilities to those encompassed in light work. With regard to
 2 Plaintiff's testimony as to her activities of daily living, Plaintiff
 3 asserts that according to accepted case law, she need not be in a
 4 vegetative state in order to be disabled. (JS at 10, citing Vertigan
 5 v. Halter, 260 F.3d 1044, 1049 (9th Cir. 2001.)

6 In accordance with the above-cited cases and regulations, the ALJ
 7 in fact did give consideration to Plaintiff's own descriptions of her
 8 activities of daily living ("ADL"). She indicated she had a driver's
 9 license and was able to drive, and drove her father and helped him to
 10 prepare his meals; she engaged in physical therapy exercises every
 11 morning; she volunteered at her church and served breakfast or worked
 12 in a day care center checking the children; she watched her
 13 grandchildren. Certainly, Plaintiff's own description of her
 14 activities in this regard contradicts her claims that she cannot do
 15 such basic things as dress herself or comb her hair. These are
 16 contradictions which are not only obvious in the record, but which the
 17 ALJ was justified in noting in depreciating Plaintiff's credibility.

18 With regard to the opinions of physicians, while contradictions
 19 between subjective testimony and objective medical evidence cannot be
 20 the sole basis to depreciate credibility, they do constitute one valid
 21 evaluative factor. (See 20 C.F.R. § 416.929(c)(1) & (2) (2013).) See
 22 also Batson v. Commissioner of Social Security Administration, 359
 23 F.3d 1190, 1196 (9th Cir. 2004); Moncada v. Chater, 60 F.3d 521, 542
 24 (9th Cir. 1995); Nyman v. Heckler, 779 F.2d 528, 530 (9th Cir. 1985).

25 Based on the record before the Court, it must conclude that the
 26 ALJ made sufficiently specific findings and did not arbitrarily
 27 discredit Plaintiff's testimony. See Orteza v. Shalala, 50 F.3d 748,
 28 750 (9th Cir. 1995). In sum, the Court finds that the ALJ provided

1 clear and convincing reasons to depreciate Plaintiff's credibility
2 based on her subjective pain and symptom testimony. For this reason,
3 the Court finds no merit in Plaintiff's sole issue in this litigation,
4 and orders that the Decision of the Commissioner will be affirmed and
5 the matter will be dismissed with prejudice.

6 **IT IS SO ORDERED.**

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8 DATED: August 23, 2013 /s/
9 VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE

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